Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	

COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS, INC.

Alaska Communications Systems, Inc. ("ACS"), through its attorneys, hereby submits the following in response to the Commission's Public Notice seeking comment on the Glide Path Policy Paper submitted by the state members of the Federal-State Joint Board on Jurisdictional Separations (the "Notice").[1]

I. INTRODUCTION AND SUMMARY.

ACS serve over 400,000 businesses, government and residential customers with a diversified range of local exchange, interexchange, wireless, data, network, and Internet services throughout the state. Through its four local operating companies, ACS serves approximately 320,000 local exchange customers in the state of Alaska.[2] The largest, ACS of Anchorage, Inc., is a midsize telephone company,[3] while its affiliated ILECs are all small, rural telephone companies.[4] Collectively, ACS and its affiliates embody the continuing evolution of telecommunications carriers toward diversified and expanded service platforms and service offerings in the post-1996 Act era.

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1 Public Notice, *Common Carrier Bureau Seeks Comment on "Glide Path" Policy Paper Filed by the State Members of the Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, DA 01-2973 (rel. Dec. 20, 2001).

2 ACS's local exchange carrier affiliates include ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc.

3 47 U.S.C. §251(f)(2); 47 C.F.R. § 32.9000 (Appendix-Glossary).

4 47 U.S.C. §153(37).

The current jurisdictional separations rules were designed for a network that no longer exists. The Commission completed its most recent comprehensive review of these rules in 1987.[5] As a result, these rules today are an increasingly quaint reflection of the architecture and usage of a network of a bygone era. In today's world, technological evolution, regulatory reforms, and legislative changes have made separations more and more difficult and less and less relevant.

Therefore, ACS urges the Commission to continue to seek every opportunity to move toward a world without jurisdictional separations. At a minimum, the Commission should confirm that rate regulation, including jurisdictional separations requirements, will automatically and immediately sunset for carriers facing effective competition. For other carriers, the Commission should also modify its jurisdictional separations rules to allocate a greater share of costs to the interstate jurisdiction. Such a step is particularly important in Alaska, given the unique nature of Alaska's location and traffic mix.

II. THE CURRENT JURISDICTIONAL SEPARATIONS RULES DESPERATELY NEED REFORM

A. Jurisdictional Separations Is Not a Universal Service Mechanism

ACS concurs with the premise of the Glide Path Policy Paper, at 2, that the multiplicity of state and federal charges, surcharges, taxes, and fees on the average subscriber bill today creates confusion and even anger among many customers. ACS, however, cautions the Commission against a return to the days when separations fulfilled the role of a universal service mechanism. The Glide Path Policy Paper eloquently describes the historical role jurisdictional separations played in "determine[ing] the relationship between fixed and variable charges to customers," Glide Path Policy Paper at 3, in the day when LECs recovered all interstate-allocated costs through carrier-paid access charges.

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[5] *Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, 2 FCC Rcd 2639 (1987). *See also Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking ("*Separations NPRM*"), 12 FCC Rcd 22120, 22125 (para. 7) (1997).

ACS believes that any changes to the jurisdictional separations rules should be made in such a way as to prevent further increases in subscriber line charges. Since at least 1996, the Communications Act has prohibited the Commission from using jurisdictional separations, without more, to control the levels of end-user charges. In that year, Congress amended the Communications Act to require the Commission to convert implicit universal service support mechanisms to explicit. 47 U.S.C. § 254(e) (support mechanisms "should be explicit"); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (implicit support must be replaced with explicit); *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (same). Indeed, the first step the Commission took toward this goal was to convert local switching support under the DEM weighting program and high-cost loop support from mechanisms funded by IXCs through interstate access charge payments into mechanisms funded by all interstate telecommunications providers and paid to the LEC on an explicit basis. *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8933 (rendering support portable), 9171 (funding through contributions from all telecommunications carriers) (1997), *aff'd sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393. But, the Commission now also provides explicit support for both intrastate-allocated costs (through its reformed high-cost universal service mechanisms,[6] and additional interstate-allocated costs.[7] If the Commission modifies the jurisdictional separations rules to allocate additional costs to the interstate jurisdiction (as ACS

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[6] *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999), *aff'd in part and rev'd and remanded in part sub nom. Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001); *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256.

[7] *Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262 and 96-45, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000), *aff'd in part, rev'd in part, and remanded sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *Multi-Association Group (MAG) Plan forRegulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001).

believes it should), it should also stand ready to provide additional universal service support if necessary to prevent additional increases to end-user rates.

B. Jurisdictional Separations Is Not a Substitute for Interstate Ratemaking.

As the Glide Path Policy Paper explains, the evolution of network technology has changed the fundamental character of some network costs, and made others more difficult to separate between jurisdictions. Glide Path Policy Paper at 4-5. In at least some cases, the Commission has attempted to "game" its own jurisdictional separations ruled in order to evade complicated policy choices such evolution precipitates.[8] Instead of brazenly shirking its responsibility to permit costs to be recovered in the jurisdiction in which they were incurred, the Commission has used technological evolution to shift massive amounts of legitimately interstate costs to the state jurisdiction. *General Communications, Inc. v. Alaska Communications System Holdings, Inc*, Memorandum Opinion and Order, 16 FCC Rcd 2834 (2001) ("*GCI*"), *appeal docketed sub nom. ACS of Anchorage, Inc. v. FCC*, No. 01-1059 (D.C. Cir. filed Feb. 7, 2001).

The Commission undoubtedly has some latitude in determining, in consultation with a Federal-State Joint Board, the proper manner in which to divide costs between the interstate and intrastate jurisdictions, 47 U.S.C. §§ 221(c), 410(c), and has plenary authority to design rate structures to recover the costs of providing interstate services, 47 U.S.C. § 201(b). It cannot, however, by fiat, require carriers to pretend that interstate costs are otherwise, and to treat them as intrastate for ratemaking purposes. *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148-49 (1930).

One of the most prominent examples of this phenomenon is the Commission's Enhanced Services Provider (ESP) exemption from paying interstate access charges. In 1983, when it devised the first post-divestiture system of interstate access charges, the Commission found that most ESPs use the LEC network much in the same way interexchange carriers do when they

originate and terminate long-distance calls, "employ[ing] exchange service for jurisdictionally interstate communications," and thus ordinarily would be subject to interstate access charges. *MTS & WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682, 715 (1983). But it determined for public policy reasons to exempt all ESPs, as a class, from LECs' interstate access charges, in order to shield ESPs from "huge increases in their costs of operation, which could affect their viability." *Id.* ESPs were thereby permitted to demand jurisdictionally interstate services while paying LECs only ordinary business-line charges under state tariffs. *Id.* at 712, 715.[9]

While the Commission at the time remained silent on the proper jurisdictional separations treatment of such traffic, it has recently attempted to enforce an interpretation of its rules that would require ACS to allocate interstate local switching costs associated with predominantly interstate traffic to the intrastate jurisdiction. *GCI*, 16 FCC Rcd 2834. This distortion of the jurisdictional separations rules has dislocated hundreds of millions of dollars (at a bare minimum) of traffic-sensitive costs to the state jurisdiction. *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Letter filed October 28, 1999, from Gina Harrison, Senior Counsel and Director, National Exchange Carrier Association, to Magalie Roman Salas, Secretary, FCC (summarizing NECA study that showed that 18% of all minutes treated as local in 1998 were Internet-bound, and concluding that "[t]reating this jurisdictionally interstate traffic as intrastate for separations purposes produces a $170 million misallocation of costs to the state jurisdiction for NECA pool members" alone).

The Commission must not use such jurisdictional separations games to avoid reasoned decisionmaking as to the proper method of recovering interstate costs in the interstate

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[8] *See, e.g., Bell Atlantic Tel. Co. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

[9] The Commission also allows ISPs the *option* to purchase their interstate access services from interstate tariffs developed specifically for this purpose. *E.g., Implementation of the Local Competition Provisions in the*

jurisdiction. Regardless of whether the Commission believes that ESPs should be subject to the same rate structure as applies to IXCs, or whether a different rate structure may better reflect ESP network usage and advance the Commission's public policy goals, the maturation of the ESP industry and the Commission's access charge reform efforts have eliminated whatever need once may have existed for the ESP exemption.[10]

C. New Technologies and Services Are Difficult to Separate between Jurisdictions.

As the Glide Path Policy Paper recognizes, new technologies are increasingly difficult to separate between the state and interstate jurisdictions. The way in which the costs of specific facilities are incurred is evolving. In addition, facilities are being used for a wider variety of services, which may include both regulated and unregulated services.

The local loop is a prime example. Digital loop carrier (DLC) systems have made some portions of common line costs more sensitive to changes in traffic levels. *Separations NPRM*, 12 FCC Rcd at 22159 n.147. In addition, a wider variety of services than ever before is being provided using local loop facilities. These services include not only interstate telecommunications services, such as digital subscriber line (DSL) services, Glide Path Policy Paper at 6, but also unregulated, jurisdictionally-mixed information services, such as caller ID and voice mail.[11] The current 25/75 split of common line costs between the state and interstate jurisdictions is plainly inadequate to reflect the true nature of this multiplicity of services.

Telecommunications Act of 1996; *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9176-77 (para. 55) (2001) ("*Reciprocal Compensation Remand Order*").

[10] In fact, since 1984, the year after the FCC created the ESP exemption, originating interstate access charges have fallen from 8.92 cents per minute to under one cent per minute, *see* Federal Communications Commission, *Trends in Telephone Service* (Com. Car. Bur., Ind. Analysis Div. Aug. 2001), at pp. 1-6 (Table 1-2) & n.3 (describing calculation methodology for originating access charges), and these charges are headed even lower, *see, e.g.,* 47 C.F.R. § 61.3(qq) (establishing 55/100 of a cent as a target per-minute rate for Bell operating companies and GTE); 47 C.F.R. § 61.45(b)(1)(ii-iii) (providing for annual reductions in per-minute access rates until target rate is reached); *MAG Order* (reducing rate-of-return carrier traffic-sensitive rates by reallocating approximately 30 percent of local switching costs to the common line rate elements).

[11] *See, e.g., Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 1619 (para. 7) (1992) (finding that voice mail is a jurisdictionally-mixed service).

Switching technology has undergone equally-dramatic changes. Since 1987, digital switching has largely supplanted analog. As a result, the Commission's existing allocation factor, based on relative DEM, does not accurately capture the relative costs of digital circuit switches in each jurisdiction. As the Joint Board has already hypothesized, an allocation factor based on switched minutes of use ("SMOU"), which would count one switched minute for each minute of intraoffice calling (as opposed to the current, DEM-based system, which counts such minutes twice) "would be the most equitable measure for assigning cost responsibility to the various services using that" digital switch. *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision and Order, 2 FCC Rcd 2551, 2560 (Jt. Bd. 1987). Furthermore, the Commission's current jurisdictional separations rules do not clearly specify how to separate the costs of packet switches. While clearly overwhelmingly interstate, packet-switched services have no clearly-defined endpoints. Internet packets transmitted and received a single session may travel among myriad destinations worldwide.

Furthermore, a greater share of facilities (such as ATM networks, SONET rings, and other high-speed, high-capacity transmission technologies) are used jointly to provide regulated telecommunications and unregulated information or data transmission services. As a result, a greater and greater share of the costs of the network are never subject to the separations process at all. These costs, instead, are allocated to unregulated services during the Part 64 cost allocation process. As a result, the separations process is becoming less and less relevant to market pricing of these services.

D. The Current System Creates Arbitrage Opportunities for New Competitors.

Because ILECs alone are subject to jurisdictional separations rules, while their CLEC, IXC, and CMRS carrier competitors are not, these rules hamper the development of efficient competition and create arbitrage opportunities. As the Glide Path Policy Paper

recognizes, jurisdictional separations has historically "pretended to accuracy it could not achieve," Glide Path Policy Paper at 2. Yet, to the extent that jurisdictional separations does not allocate costs precisely in the way that the competitive market would, it opens opportunities for arbitrage and inefficient competition, while threatening universal service. By asymmetrically requiring ILECs alone to recover particular costs in a particular jurisdiction (and, through operation of the interstate rate structure, often from a particular service), the Commission allows competitors to undercut ILEC pricing on selected services.

For example, by mandating that certain ILEC costs are recoverable exclusively in the interstate jurisdiction through the subscriber line charge (SLC), the Commission opens the door to competitive arbitrage. The Commission's recently-imposed caps on CLEC interstate access charges, *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001), *appeal docketed sub nom. AT&T Corp. v. FCC*, D.C. Cir. filed Oct. 24, 2001, are an ineffective remedy for this problem. CLECs are not subject to jurisdictional separations and, therefore, may simply shift additional cost recovery to *intrastate* access charges in a manner that the ILEC cannot replicate. Thus, even when the ILEC is the overall low-cost service provider, the CLEC may design its rates so as falsely to appear the end-user (who makes the decision among service providers) to be less costly than the ILEC.

Similarly, the Commission's ESP exemption, coupled with the rising availability and quality of Internet-protocol voice transmission ("VoIP"), has enabled ISPs to compete against circuit-switched local exchange and interexchange carriers, in many cases simply by exploiting their access charge cost differential. If the Commission were to accept ratemaking responsibility for jurisdictionally interstate costs, as ACS believes that it ultimately must, then the Commission would be able fully to explore the public policy implications of the expanding use of packet-based transmission and switching technologies.

III. THE COMMISSION SHOULD PURSUE A JURISDICTIONAL SEPARATIONS-FREE WORLD.

Because the jurisdictional separations rules create opportunities for arbitrage and inefficient competition, fail accurately to properly allocate costs of modern network technology between the state and federal jurisdictions, and no longer promote universal service goals, the Commission should actively seek opportunities to allow market mechanisms to function and eliminate the constraints of jurisdictional separations. In the interim, the Commission should modify its jurisdictional separations rules to place additional costs within the interstate jurisdiction.

A. Rates Should Be Driven by Market Forces, not Jurisdictional Separations Rules.

ACS concurs with the state members of the Joint Board that, as competition develops and market forces increasingly govern the pricing of telecommunications services, the jurisdictional separations process should be eliminated. Glide Path Policy Paper at 25; *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, State Members' Report on Comprehensive Separations Review of Separations, filed December 21, 1998 ("*1998 State Members' Report*") at 6 (jurisdictional separations unnecessary if all ILEC services declared competitive). In a competitive market, market forces, not jurisdictional separations and the four-step regulatory process outlined in Parts 32, 64, 36, and 69 of the Commission's rules, should govern rates.

ACS believes that Anchorage meets any test of its openness to competition. Anchorage is among the most competitive markets in the nation and the Commission has already found that competition in the Anchorage market precludes uneconomic pricing and provides every Anchorage customer – residential and business alike – with at least two choices of local telecommunications service provider. *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, Order, 15 FCC Rcd 20655, 20661-62 (paras.19-21) (2000) (competitor collocated in 100 percent of wire centers and providing service to over 15 percent of Anchorage market, making it

"it unlikely that [ACS] could lock-up the market and preclude competition from developing further"). In fact, competition in Anchorage is holding ACS's interstate local switching rates below the level its costs otherwise would allow. *See, e.g.,* ACS of Anchorage, Inc., Tariff F.C.C. No. 1, (filed Dec. 17, 2001). Such competition provides a favorable climate for the elimination of jurisdictional separations.

B. If the Commission Retains Jurisdictional Separations Rules, It Should Assume Responsibility for a Greater Share of Network Costs.

For carriers that remain subject to rate regulation and the Commission's jurisdictional separations rules, ACS urges the Commission to move closer to the Glide Path Policy Paper's Option 6B, "One Federal Jurisdiction." As discussed above, the current rules allocate insufficient costs to the federal jurisdiction. Particularly in Alaska, where a disproportionately large share of telecommunications traffic travels interstate, the Commission should take jurisdictional responsibility for additional costs. ACS proposes the following specific changes as interim steps toward this goal:

(1) Loop Costs. The Commission should modify its rules to allocate a greater share of loop costs to the federal jurisdiction. Since 1987, the local loop has been used to provide increasing amounts of interstate services, including rapidly-increasing use of interstate, interexchange services, dial-up connections to the Internet, and DSL service. As a result, the 25 percent interstate allocation factor no longer reflects the same policy compromise it did when it was adopted. Glide Path Policy Paper at 3 n.3.

(2) Switching Costs. The Commission also should take jurisdictional responsibility for interstate switched traffic sensitive costs that, to date, it has arbitrarily shifted to the state jurisdiction. The costs of switching dial-up Internet traffic, which the Commission has recently reaffirmed as an interstate service under its end-to-end analysis, *Reciprocal Compensation Remand Order*, 16 FCC Rcd 9151, 9177-78, should be allocated to the interstate jurisdiction. ACS

therefore urges the Commission to accept local switching costs of this traffic, and to develop an interstate recovery mechanism that reflects the needs of ISPs, LECs, and IXCs alike.

IV. CONCLUSION.

For the foregoing reasons, ACS urges the Commission to eliminate jurisdictional separations for those carriers facing effective competition and, for other carriers, to modify its jurisdictional separations rules to allocate a greater share of costs to the interstate jurisdiction.

Respectfully submitted,

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